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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



IndyMac Bank, F.S.B.
Opposer

11-19-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #67

v.

Woodruff-Sawyer & Co.,
Applicant

Opposition No. _____
Serial No.: 76/063,752
Filed: June 2, 2000
Mark: **EMIT ELECTRONIC
SUBMISSION SYSTEM
& Design**

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: BOX TTAB FEE

11/23/2001 KGIBBONS 00000090 76063752

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300.00 OP

NOTICE OF OPPOSITION

In the matter of Trademark Application Serial No. 76/063,752, filed June 2, 2000, by Woodruff-Sawyer & Co. ("Applicant") and published at page TM 352 of the November 6, 2001 issue of the U.S. Patent and Trademark Office's Official Gazette.

IndyMac Bank, F.S.B., a federally chartered savings bank, having a place of business at 155 North Lake Avenue, Pasadena, California 91101 ("Opposer"), believing that it will be damaged by registration of the mark EMIT ELECTRONIC SUBMISSION SYSTEM & Design as set forth in Application Serial No.

76/063,752 allege as follows:

1. Applicant filed Application Serial No. 76/063,752 based on an intention to use the mark EMIT ELECTRONIC SUBMISSION SYSTEM & Design

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L.L.P.
1300 I STREET, N.W.
WASHINGTON, DC 20005
202-408-4000

in commerce. On information and belief, Applicant has not yet used EMIT ELECTRONIC SUBMISSION SYSTEM & Design to identify any product or service.

2. On December 23, 1997, long before Applicant's June 2, 2000 application filing date, Opposer began using the mark E-MITS in the United States in connection with products and services in the financial services industry, specifically for a system that allows for the on-line submission of documents and data relating to mortgage lending, including among other things, the submission and approval of loan applications, the purchase and sale of loans, and underwriting and pricing of loans.

3. Opposer owns U.S. Trademark Registration No. 2,190,744 on the Principal Register for the mark E-MITS used in connection with "computer software for the purchase and sale of mortgage loans, transfer of data for processing mortgage loans, underwriting and pricing of mortgage loans, and delivery of results of mortgage loan processing, all for use on personal computers, computer networks or a global communications network and instruction manuals," in International Class 9 and granted on September 22, 1998.

4. Opposer is the owner of U.S. Trademark Registration No. 2,196,613 on the Principal Register for the mark E-MITS (Stylized) used in connection with "computer software which enables a user to electronically access an automated seller information and processing system for the sale of mortgage loans and accompanying instructional documentation, " in International Class 9, and granted on October 13, 1998.

5. Opposer has continuously used the E-MITS and E-MITS (Stylized) marks in interstate commerce in connection with the advertising, promotion, rendering, and/or sale of its goods and services described above.

LAW OFFICES

FINNEGAN, HENDERSON,
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& DUNNER, L.L.P.
1300 I STREET, N. W.
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6. In view of the similarity of Applicant's and Opposer's marks and the goods and services they identify, Applicant's mark EMIT ELECTRONIC SUBMISSION SYSTEM & Design so closely resembles Opposer's E-MITS and E-MITS (Stylized) marks, described above, as to be likely to cause confusion, or to cause mistake, or to deceive people to believe, mistakenly, that Applicant's services originate from, are sponsored by, or are in some way associated with Opposer.

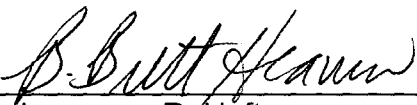
7. Opposer's mark having become famous prior to Applicant's filing date of June 2, 2000, Applicant's registration of the mark EMIT ELECTRONIC SUBMISSION SYSTEM & Design will dilute the distinctiveness of Opposer's E-MITS and E-MITS (Stylized) marks by lessening their capacity to identify and distinguish goods and services.

8. For these reasons, Opposer would be damaged by the registration of Application Serial No. 76/063,752.

WHEREFORE, Opposer prays that registration of Application Serial No. 76/063,752 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

The required filing fee of \$300 accompanies this notice. If the Filing Fee is insufficient please charge the deficiency to our Deposit Account No. 06-0916.

Respectfully submitted,
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER

By: 

Laurence R. Hefter
B. Brett Heavner
1300 I Street, N.W.
Washington, D.C. 20005
202-408-4000
Fax 202-408-4400

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000